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EXAMINER
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BHARADWAJ, KALPANA

ART UNIT	PAPER NUMBER
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2109

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05/16/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/736,657	Applicant(s) LOPEZ-ESTRADA, ALEX A.	
	Examiner Bharadwaj Kalpana	Art Unit 2109	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 February 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 11-27,29-31 and 34-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-27,29-31 and 34-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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### **DETAILED ACTION**

1. This office action is in response to an AMENDMENT entered Feb 07, 2007 for the patent application 10/736657 filed on December 15, 2003. Due to a modification in the rejections, this action is made Non Final.
2. The First Office Action of Jan 17, 2007 is fully incorporated into this Non-Final Office Action by reference.

### **Status of Claims**

3. Claims 11-27, 29-31, 34-37 are pending.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 17-20, 24-26, 31, 36 and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Reinemann (USPN 20030115118, referred to as **Reinemann**).

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As to **Claim 17**, Reinemann anticipates generating, by a computer system (Reinemann, Fig 1: CPU, storage, processor), a lookup index to one or more sets configuration parameters values (Reinemann, ¶ 0013 and abstract; 'Generating a lookup index' is nothing more than values based on current resource workload. 'One or more sets configuration parameter values' of applicant is equivalent to 'parameters configured to specify a target range for each of the resources.. .' of Reinemann.) based at least in part on one or more performance events observed in association with a platform's execution of a workload (Reinemann, ¶ 0011 ; 'Index' of applicant is equivalent to 'archived' by Reinemann.); and selecting, by a computer system (Reinemann, Fig 1: CPU, storage, processor), one of one or more pre-established sets of configuration parameter values, based at least in part on the generated lookup index (Reinemann, ¶ 0013), for application to configure the platform (Reinemann, ¶ 0012; The policy manager uses the performance status for determination and the performance status is indexed (equivalent to archived of Reinemann)).

As to **Claim 18**, Reinemann anticipates evaluating an index function in view of the one or more performance events observed. (Reinemann, ¶ 0003 and Figure #1; The utilization of processors 11, 12 and 13 in Figure #1 are monitored for overloading or underutilization. The results of these are archived for the policy manager to evaluate.)

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As to **Claim 19**, Reinemann anticipates performing a selected one of receiving the one or more performance events observed; and monitoring said execution of the workload by the platform. (Reinemann, ¶ 0014; The policy manager monitors the resource utilization. 'Performance events' of applicant is equivalent to 'resource utilization' of Reinemann.)

As to **Claim 20**, Reinemann anticipates performing a selected one of providing information about the selected set of one or more configuration parameter values to facilitate application of the selected set of one or more configuration parameter values to configure the platform (Reinemann, ¶ 0013; 'Providing information' of applicant is equivalent to 'target range' of parameters of Reinemann.); and applying the selected set of one or more configuration parameter values to configure the platform, the platform being a part of the system. (Reinemann, abstract; 'Applying' the set of applicant is equivalent 'releasing a portion' of Reinemann.)

As to **Claim 24**, Reinemann anticipates storage medium having stored therein programming instructions (Reinemann, ¶ 0002; 'Storage medium' of applicant is equivalent to 'disk - storage' of Reinemann.) designed to enable the apparatus to generate a lookup index to one or more sets of configuration parameter values (Reinemann, ¶ 0013 and abstract; 'Generating a lookup index' is nothing more than values based of current resource workload. 'One or more sets configuration parameter

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values' of applicant is equivalent to 'parameters configured to specify a target range for each of the resources ...' of Reinemann. 'Configuration parameters' of applicant is equivalent to 'parameters configured' of Reinemann.), based at least in part on one or more performance events observed in associated with a platform's execution of a workload (Reinemann, ¶ 0011; 'Index' of applicant is equivalent to 'archived' by Reinemann.); and select one of one or more pre-established sets of configuration parameter values, based at least in part on the generated index, for application to configure the platform (Reinemann, ¶ 0012; The policy manager uses the performance status for determination and the performance status is indexed (equivalent to archived of Reinemann).); and at least a processor coupled to storage medium to execute the programming instructions. (Reinemann, ¶ 0002)

As to **Claim 25**, Reinemann anticipates evaluating an index function in view of the one or more performance events observed. (Reinemann, ¶ 0003 and Figure #1 ; The utilization of processors 11, 12 and 13 in Figure #1 are monitored for overloading or underutilization. The results of these are archived for the policy manager to evaluate.)

As to **Claim 26**, Reinemann anticipates receiving the one or more performance events observed; monitoring said execution of the workload by the platform (Reinemann, ¶ 0014; The policy manager monitors the resource utilization. 'Performance events' of applicant is equivalent to 'resource utilization' of Reinemann.); providing information about the selected set of one or more configuration parameter

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values to facilitate application of the selected set of one or more configuration parameter values to configure the platform (Reinemann, ¶ 10013; 'Providing information' of applicant is equivalent to 'target range' of parameters of Reinemann.); and applying the selected set of one or more configuration parameter values to configure the platform, the platform being a part of the system. (Reinemann, abstract; 'Set1 and 'applying' of applicant is equivalent to 'policy' and 'releasing a portion' of Reinemann.)

As to **Claim 31**, Reinemann anticipates a machine readable medium instructions (Reinemann, ¶ 0002; 'Machine readable medium' of applicant is equivalent to 'disk storage' of Reinemann.); and a plurality of programming instructions on the machine readable medium, designed to enable an apparatus to observe one or more performance events associated with a platform's execution of a workload or receive the one or more performance events observed (Reinemann, ¶ 0012, abstract 'Performance events', 'platform' 'observed' of applicant are equivalent to 'utilization the resources', 'network or processors' 'obtains the performance status' of Reinemann.), and to at least contribute. In selection of one or more configuration parameters values for application to configure the platform, based at least in part on the one or more performance events observed, (Reinemann, ¶ 0012 and ¶ 0013; The 'policy manager' selects which policy (equivalent to 'set' of applicant) to implement and each policy includes parameters.) wherein the at least contributing includes the platform determining whether the workload resembles one of one or more references workloads (Reinemann, ¶ 0013; 'reference

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workload' of applicant is equivalent to 'usage pattern' of Reinemann.), based at least in part on the received one or more performance events observed, the resembled reference workloads to be employed to facilitate said selection of one or ore configuration parameter values (Reinemann, abstract, ¶ 0013; 'Events observed' and 'performance events' of applicant is equivalent to 'monitor and 'resource utilization' of Reinemann.

'Configuration parameters' of applicant is equivalent to 'parameters configured' of Reinemann.); or generating a lookup index to one or more sets (Reinemann, ¶ 0013 and abstract; 'Generating a lookup index' is nothing more than values based of current resource workload. 'One or more sets configuration parameter values' of applicant is equivalent to 'parameters configured to specify a target range for each of the resources.. .' of Reinemann) of configuration parameter (Reinemann, ¶ 0013;

'Configuration parameters' of applicant is equivalent- to 'parameters configured' of Reinemann.) values based at least in part on the received observed one or more performance events, to facilitate said selection of one of the one or more configuration parameter values. (Reinemann, ¶ 0013 and ¶ 0014; 'Performance events' of applicant is demonstrated by 'resources operates above the upper threshold' of Reinemann.

'Selection'. . . 'configuration parameters' of applicant is performed by the 'centralized policy manager' which 'manages resource utilization' of Reinemann.)

As to **Claim 36**, Monitoring at least a selected one of a processor performance counter (Reinemann, ¶ 0011 ; 'Processor performance counter' of applicant is illustrated



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by the 'accounting manager' of Reinemann.), an OS performance counter (Reinemann, ¶ 0011), and a chipset performance counter (Reinemann, ¶ 0011), while the platform executes the workload.

As to **Claim 37**, One or more of processor configuration parameters values (Reinemann, ¶ 0028; 'Processor configuration parameters' of applicant is equivalent to 'memory usage' of Reinemann.), OS configuration parameter values (Reinemann, ¶ 0028; 'Os configuration parameter' of applicant is equivalent to 'processor utilization' of Reinemann.), and chipset configuration parameter values. (Reinemann, ¶ 0028; 'Chipset configuration parameter' of applicant is equivalent to 'virtual memory swap file usage' of Reinemann.)

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 11-16, 21-23, 27, 29, 30, 34 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reinemann, as set forth above, and further in view of Chiu (USPN 2002/0186658, referred to as **Chiu**).

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As to **Claim 11**, Reinemann teaches determining (Reinemann, ¶ 0012; 'Determining' of applicant is accomplished by the 'policy manager' of Reinemann), by a computing system (**Reinemann**, Fig. 2: Policy manager 23 is shown to interface with a disk storage and a CPU which establish a computing system).

Although Reinemann teaches a workload (Reinemann; ¶ 0014: processors) and a reference workload (Reinemann; ¶ 0013: usage patterns) he fails to teach whether a workload executed or being executed by a platform resembles a reference workload. Chiu teaches whether a workload executed or being executed by a platform resembles a reference workload. (Chiu, ¶ 0023; 'Reference workload' of applicant is equivalent to 'OSPF' of Chiu.) It would have been obvious to a person having ordinary skill in the art at the time of applicant's invention to modify the teachings of Reinemann by going into specific detail of an accepted that can be used with the method as taught by Chiu to have whether a workload executed or being executed by a platform resembles a reference workload.

For the purpose of integrating the method into the real world situation. Reinemann teaches based at least in part on one or more performance events observed from monitoring the platform's execution of the workload (Reinemann, 'Performance events' of applicant is equivalent to 'respective resources' of Reinemann.); and if the workload is determined to resemble the reference workload, performing, by the computer system (**Reinemann**, Fig. 2: Policy manager 23 is shown to interface with a disk storage and a CPU which establish a computing system), a selected one of selecting, by the

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computing system (**Reinemann**, Fig. 2: Policy manager 23 is shown to interface with a disk storage and a CPU which establish a computing system) a set of one or more configuration parameter values pre-selected for the platform to execute the resembled reference workload (**Reinemann**, ¶ 0013; 'Set' of applicant is equivalent to 'policy' of **Reinemann**.) and providing, by the computing system (**Reinemann**, Fig. 2: Policy manager 23 is shown to interface with a disk storage and a CPU which establish a computing system), information about the determined resembled reference workload to facilitate the selection of the set of one or more configuration parameter values pre-selected for the platform to execute the determined resembled reference workload. (**Reinemann**, ¶ 0012; The 'accounting manager' of **Reinemann** provides information to the 'policy manager' which selects the policy (equivalent to 'set' of applicant)).

As to **Claim 12**, **Reinemann** fails to particularly call for one or more reference workloads comprise at least a selected one of a route look-up workload, a OSPF workload, a JPEG codec workload, a 3DES encryption/decryption workload, an AES encryption/decryption workload, an IP packet forwarding workload, and a H.323 speech codec workload. Chiu teaches one or more reference workloads comprise at least a selected one of a route look-up workload, a OSPF workload, a JPEG codec workload, a 3DES encryption/decryption workload, an AES encryption/decryption workload, 6 an IP packet forwarding workload, and a H.323 speech codec workload. (Chiu, ¶ 0023) It would have been obvious to a person having ordinary skill in the art at the time of

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applicant's invention to modify the teachings of Reinemann by gonging into some specific detail on what a 'reference workload' is as taught by Chiu to have one or more reference workloads comprise at least a selected one of a route look-up workload, a OSPF workload, a JPEG codec workload, a 3DES encryption/decryption workload, an AES encryption/decryption workload, an IP packet forwarding workload, and a H.323 speech codec workload.

For the purpose of indicating that the invention is compatable with real world protocols that would enable it to interact with other real world systems.

As to **Claim 13**, Reinemann anticipates determining a correlation metric between the workload and the reference workload, based on the one or more performance events observed during said monitoring (Reinemann, ¶ 0037; 'Correlation metric ' of applicant is equivalent to 'utilization' of Reinemann.), and observed during 'at least one prior execution of the reference workload; and determining whether the correlation metric exceeds a correlation threshold. (Reinemann, ¶ 0037; 'Correlation threshold' of applicant is equivalent to 'threshold' of Reinemann.)

As to **Claim 14**, Reinemann anticipates receiving the one or more performance events observed during said monitoring; and said monitoring. (Reinemann, 70014; The policy manager monitors the resource utilization. 'Performance events' of applicant is equivalent to 'resource utilization' of Reinemann.)

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As to **Claim 15**, Reinemann anticipates the platform; and the method further comprises executing the workload (Reinemann, abstract ; 'Workload' and- 'platform' of applicant is equivalent to 'processors (NOTE # CPU)' and 'network of processors' of Reinemann.), and performing said monitoring. (Reinemann, abstract; 'Monitoring' of applicant is equivalent to 'monitor of Reinemann.)

As to **Claim 16**, Reinemann anticipates said performing comprises selecting a set of one or more configuration parameter values pre-selected for the platform to execute the determined resembled reference workload (Reinemann, ¶ 0012; The policy manager selects policies and pre-selects based on performance status.); and the method further comprises performing a selected one of applying the selected set of one or more configuration parameter values to configure the platform (Reinemann, abstract; 'Applying' the set of applicant is equivalent 'releasing a portion' of Reinemann.), and providing information about the selected set of one or more configuration parameter values to facilitate application of the selected set of one or more configuration parameter values to configure the platform. (Reinemann, ¶ 0013; 'Providing information' of applicant is equivalent to 'target range' of parameters of Reinemann.)

As to **Claim 21**, Reinemann anticipates storage medium having stored therein programming instructions designed to enable the apparatus (Reinemann, ¶ 0002; 'Storage medium' of applicant is equivalent to 'disk storage' of Reinemann) perform at least a selected one of selecting a set of one or more configuration parameter values pre-selected for the platform to execute the determined resembled reference workload

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(Reinemann, abstract; 'Applying' the set of applicant is equivalent 'releasing a portion' of Reinemann.), and providing information about the determined resembled reference workload to facilitate the selection of the set of one or more configuration parameter values pre-selected for the platform to execute the determined resembled reference workload (Reinemann, ¶ 0012; The 'accounting manager' of Reinemann provides information to the 'policy manager' which selects the policy (equivalent to 'set' of applicant) ); and at least one processor coupled to the storage medium to execute the programming instructions. (Reinemann, ¶ 0002)

Reinemann fails to teach how to determine whether a workload executed or being executed by a platform sufficiently resembles a reference workload, based at least in part on one or more performance events observed from monitoring the platform's execution of the workload, and if the workload is determined to sufficiently resemble the reference workload,

However, Reinemann does teach performance events observed from monitoring the platform's execution of the workload (Reinemann, ¶ 0014; 'performance events', 'monitoring' and 'workload' of applicant is equivalent to 'resource', 'monitors' and 'processors' of Reinemann.) and Chiu teaches whether a workload resembles a reference workload. See claim 11 for discussions which has been omitted here for brevity.

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As to **Claim 22**, Reinemann anticipates programming instructions are designed to enable the apparatus to perform said determine by determining a plurality of correlation metrics between the workload (Reinemann; ¶ 0014: processors) and the reference workload (Reinemann; ¶ 0013: usage patterns), based on the one or more performance events observed during said monitoring, 'observed during at least one prior execution of the reference workload (Reinemann, 70037; 'Correlation metric ' of applicant is equivalent to 'utilization' of Reinemann.); and determining whether at least one of determined correlation metrics exceeds a correlation threshold. (Reinemann, 10037; 'Correlation threshold' of applicant is equivalent to 'threshold' of Reinemann.)

As to **Claim 23**, Reinemann anticipates receiving the one or more performance events observed during said monitoring (Reinemann, ¶ 0014; The policy manager monitors the resource utilization. 'Performance events' of applicant is equivalent to 'resource utilization' of Reinemann.); monitoring the execution of the workload to observe the one or more performance events; providing information about the selected set of one or more configuration parameter values to facilitate application of the selected set of one or more configuration parameter values to configure the platform (Reinemann, ¶ 0013, 'Providing information' of applicant. is equivalent to 'target range' of parameters of Reinemann.); and applying the selected set of one or more configuration parameter values to configure the platform. (Reinemann, abstract; 'Set' and 'applying' of applicant IS equivalent to 'policy' and 'releasing a portion' of Reinemann.)

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As to **Claim 27**, Reinemann anticipates

a platform to execute a workload (Reinemann, abstract ; 'Workload' and 'platform' of applicant is equivalent to 'processors (NOTE # CPU)' and 'network of processors' of Reinemann.);

a monitor, either coupled to or an integral part of the platform, to observe one or more performance events associated with the platform's execution of the workload (Reinemann, ¶ 0012; 'Monitor' of applicant is equivalent to 'interface' if Reinemann.; and

an analyzer coupled to the monitor to receive the one or more performance events observed, and in response (Reinemann, ¶ 0012; 'Analyzer' of applicant is equivalent to 'policy manager' of Reinemann.), at least contribute to selecting if possible, a set of one or more configuration parameters values for application to configure the platform, based at least in part on the one or more performance events observed (Reinemann, abstract; 'Set' and 'applying' of applicant is equivalent to 'policy' and 'releasing a portion' of Reinemann.),

Reinemann fails to teach, wherein the analyzer is adapted to at least contribute by determining whether the workload resembles one of one or more reference workloads, based at least in part on the received one or more performance events observed, the resembled reference workload being employed to facilitate said selection of one of the one or more configuration parameter values.

However, Reinemann does teach a workload (Reinemann; ¶ 0014: processors) and a reference workload (Reinemann; ¶ 0013: usage patterns) and performance



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events observed, the resembled reference workload being employed to facilitate said selection of one of the one or more configuration parameter values. (Reinemann, ¶ 0013; 'Analyzer' of applicant is equivalent to 'policy manager' of Reinemann.

'Performance events' of applicant is demonstrated by 'resources operates above the upper threshold' of Reinemann. 'Configuration parameter' of applicant is equivalent to 'parameter configured' of Reinemann.) and Chiu teaches the resemblance of a reference workload. Refer to discussions in claim 11 which has been omitted here for brevity.

As to **Claim 29**, Reinemann anticipates the analyzer is adapted to at least contribute by generating a lookup index to one or more sets of configuration parameter values (Reinemann, ¶ 0013 and abstract; 'Generating a lookup index' is nothing more than values based of current resource workload. 'One or more sets configuration parameter values' of applicant is equivalent to 'parameters configured to specify a target range for each of the resources ...' of Reinemann. 'Configuration parameters' of applicant is equivalent to 'parameters configured' of Reinemann.), to facilitate said selection of one of the one or more configuration parameter values, based at least in part on the received one or more performance events observed. (Reinemann, ¶ 0011; 'Index' of applicant is equivalent to 'archived' by Reinemann.)

As to **Claim 30**, Reinemann anticipates a first networking interface; and the system further comprises a computing device hosting the analyzer, the computing

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device including a second networking interface to couple the computing device with the platform via a network connection. (Reinemann, ¶ 0012 and ¶ 0019; The analyzer of applicant is equivalent to 'policy manager' of Reinemann. 'First networking interface' and 'second networking interface' of applicant is equivalent to 'user A' and user B' of Reinemann. If both Users A & B can 'identify' resources then there must exist an interface.)

As to **Claim 34**, Reinemann anticipates monitoring at least a selected one of a processor performance counter (Reinemann, ¶ 0011 ; 'Processor performance counter' of applicant is illustrated by the 'accounting manager' of Reinemann.), an OS performance counter (Reinemann, ¶ 0011), and a chipset performance counter (Reinemann, ¶ 0011), while the platform executes the workload.

As to **Claim 35**, Reinemann anticipates one or more of processor configuration parameters values (Reinemann, ¶ 0028; 'Processor configuration parameters' of applicant is equivalent to 'memory usage' of Reinemann.), OS configuration parameter values (Reinemann, ¶ 0028; 'Os configuration parameter' of applicant is equivalent to 'processor utilization' of Reinemann.), and chipset configuration parameter values. . (Reinemann, ¶ 0028; 'Chipset configuration parameter' of applicant is equivalent to 'virtual memory swap file usage' of Reinemann.)

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***Response to Amendment***

8. The claim rejections under 35 U.S.C. § 101 have been withdrawn.
9. Applicant's arguments filed on Feb 7, 2007 for claims 11 -27, 29-31 and 34-37 have been fully considered but are not persuasive.
10. In reference to the Applicant's argument:

Claim Rejections under 35 U.S.C. § 101

With regard to the invention having a practical application, the applicant has argued that the practical application of 'enhancing performance' as a result of 'platform adaptation' has been explicitly argued in the specification. Also, the real-world value of a configured/adapted platform has been discussed.

*Examiner's response:*

*Applicant's arguments, see 10-13, filed Feb 07, 2007, with respect to 35 U.S.C. § 101 have been fully considered and are persuasive. The claims 11-27, 29-31, and 34-37 of Claim Rejections under 35 U.S.C. § 101 have been withdrawn.*

Claim Rejections under 35 U.S.C. 5 102

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In "Claim Rejections - 35 USC § 102," on page 5 (pages 13-15 of Applicant's Arguments) of the above-identified final office Action, claims 17-27, 29-31, 36, and 37 have been rejected as being anticipated by Reinemann, U.S. Patent Publication No. 2003/0115118 under 35 U.S.C. § 102(b).

**Claims 21-23, 27, and 29-30:**

Applicant argues with regard to **claim 11**, that the examiner made an improper rejection under USC § 102, of claims 21 and 27 which recite "whether a workload executed or being executed by a platform resembles a reference workload" whereas, claim 11, that recites a similar limitation has not being rejected under USC § 102.

*Examiner's response:*

*Applicant's arguments, see Page 13, filed Feb 07, 2007, with respect to 35 U.S.C. § 102 have been fully considered and are persuasive. The rejections of claims 21-23, 27 and 29-30, under 35 U.S.C. § 102 have been withdrawn.*

**Claims 17-20, 24-26, 31, 36, and 37:**

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Applicant's argument regarding **claim 17** that Reinemann teaches archiving of performance metrics in a log file as opposed to the applicant's invention that generates a lookup index to one or more sets of configuration parameter values.

*Examiner's response:*

*As pointed out by the applicant, Reinemann teaches archiving performance metrics in a log file. As is well known in the fundamental art, 'archiving' refers to a collection and also to the location in which the collection is kept. Therefore, the process of archiving is equivalent to generating a lookup index. Hence, the reference anticipates the claim.*

Applicant's argument concerning **claims 24 and 31** that recite limitations similar to those of claim 17, and are thus patentable over Reinemann for at least the same reasons.

*Examiner's response:*

*Since claims 24 and 31 recite limitations that are similar to those of claim 17 and the reasons for why the rejection on claim 17 still stands, has been discussed above, the examiner contends that claims 24 and 31 remain unpatentable over Reinemann.*

Applicant's argument concerning **claims 18-20, 25-26, 36, and 37** that depend from amended claims 17 and 24, incorporating their limitations.

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*Examiner's response:*

*Since claims 18-20, 25-26, 36, and 37 depend on amended claims 17 and 24, and the reasons for why the rejections on claim 17 and 24 holds has been discussed above, the examiner contends that claims 18-20, 25-26, 36, and 37 remains unpatentable over Reinemann.*

Claim Rejections under 35 U.S.C. S 103

In "Claim Rejections - 35 USC § 103," on pages 14-15 (pages 16-18 of Applicant Arguments) of the above-identified final Office Action, claims 11-16, 34, and 35 have been rejected as being unpatentable over Reinemann, and further in view of Chiu, U.S. Patent Publication No. 2002101 86658 under 35 U.S.C. § 103(a).

Applicant's argument concerning **claim 11** that the invention is about a method of determining whether a workload executed or being executed by a platform resembles a reference workload, and the set of configuration parameter values thus selected being used to reconfigure the platform for optimal performance and that the references fail to show such a reconfiguration.

*Examiner's response:*

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*In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which the applicant relies on (ie. configuration parameters values are used to reconfigure the platform) page 17, line 1, are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claim. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Therefore, claim 11 and claims 12-16, 34 and 35 which are dependent on claim 11, stand rejected.*

Applicant's argument concerning the deficiency of Reinmann and Chiu, regarding the limitation of 'comparison' of workload (page 17 of Applicant Arguments), which the applicant argues, has not been addressed by the combined references, specifically emphasizing the comparison aspect.

*Examiner's response:*

*In response to applicant's argument, the examiner points out that Chiu's invention is about 'selectively off-loading traffic' (Chiu, Abstract). Selectivity refers to a selection among comparable options, and hence, would be axiomatically equated to 'comparison of workloads', in this case.*

**Examinations Considerations**

11. Examiner's Notes (EN) are provided with the cited references to prior art to assist the applicant to better understand the nature of the prior art, application of such prior art

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and, as appropriate, to further indicate other prior art that maybe applied in other office actions. Such comments are entirely consistent with the intent and spirit of compact prosecution. However, and unless otherwise stated, the Examiner's Notes are not prior art but a link to prior art that one of ordinary skill in the art would find inherently appropriate.

### ***Conclusion***

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bharadwaj Kalpana whose telephone number is (571) 270-1641. The examiner can normally be reached on Monday-Friday 7:30am 5:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wu Xiao can be reached on (571) 272-7761. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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May 14, 2007

  
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